

RMW

530

FILED
APR 9 2008

1 **PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

2 Name Hernandez Morales, Elias
(Last) (Initial)

3 Prisoner Number 72342-008

4 Institutional Address P. O Box 4000, Springfield miss.
5 65801

7 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

8 Elias Hernandez Morales
(Enter the full name of plaintiff in this action.)

9 **VS.**

10 Marty Anderson, Warden
11 U.S. Medical Center for Federal
12 Prisoners

13 Springfield, mo
(Enter the full name of respondent(s) or jailor in this action)

14

15

16 **Case No. 08-44005-L**
(To be provided by the clerk of court)

17 **PETITION FOR A WRIT
OF HABEAS CORPUS**

18 **E-filing**

19 **RMW**

20 **(PR)**

16 **Read Comments Carefully Before Filing In**

17 **When and Where to File**

18 You should file in the Northern District if you were convicted and sentenced in one of these
19 counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa,
20 San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in
21 this district if you are challenging the manner in which your sentence is being executed, such as loss of
22 good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

23 If you are challenging your conviction or sentence and you were not convicted and sentenced in
24 one of the above-named fifteen counties, your petition will likely be transferred to the United States
25 District Court for the district in which the state court that convicted and sentenced you is located. If
26 you are challenging the execution of your sentence and you are not in prison in one of these counties,
27 your petition will likely be transferred to the district court for the district that includes the institution
28 where you are confined. Habeas L.R. 2254-3(b).

MS-04238-Pnw

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
 7 but may be subject to such custody in the future (e.g., detainers), you must name the person in whose
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
 13 County Superior Court, Oakland):

14 Del Rio Tx. 111 Broadway 78840 Tx.

15 Court Location

16 (b) Case number, if known 094100 SL

17 (c) Date and terms of sentence I broke in status

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
 19 parole or probation, etc.) Yes No

20 Where?

21 Name of Institution: Springfield miss. Medical Center

22 Address: Springfield miss. P.O Box 4000-65801

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Case: Dr Stemant for INS

27 Alien: Immigration. Immigration

1 3. Did you have any of the following?

2 Arraignment: Yes No

3 Preliminary Hearing: Yes No

4 Motion to Suppress: Yes No

5 4. How did you plead?

6 Guilty Not Guilty Nolo Contendere

7 Any other plea (specify) Guilty before

8 5. If you went to trial, what kind of trial did you have?

9 Jury Judge alone Judge alone on a transcript

10 6. Did you testify at your trial? Yes No

11 7. Did you have an attorney at the following proceedings:

12 (a) Arraignment Yes No

13 (b) Preliminary hearing Yes No

14 (c) Time of plea Yes No

15 (d) Trial Yes No

16 (e) Sentencing Yes No

17 (f) Appeal Yes No

18 (g) Other post-conviction proceeding Yes No

19 8. Did you appeal your conviction? Yes No

20 (a) If you did, to what court(s) did you appeal?

21 Court of Appeal Yes No

22 Year: 2006 Result: _____

23 Supreme Court of California Yes No

24 Year: 2007 Result: denied chief face

25 Any other court Yes No

26 Year: 2007 Result: I state for trial

27 (b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes No

Yes No

(c) Was there an opinion? Yes No

Yes No

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes No

If you did, give the name of the court and the result:

Room 8112 110 South Church Av.

Turson, AZ 9.5.701 - 16

3 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes No

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: San Joaquin 1st Room 28345713

19 Type of Proceeding: 2255 motion trial appeal

20 | **Grounds raised (Be brief but specific):**

20
21 a. The APPENDIX, 2255.

22 b. Habeas: Indictment.

23 c. Case: enter bat not Seender

24 d. for Case APPAL.

25 Result: CROSS - APPAL Date of Result: 1002

26 II. Name of Court: Tucson, AZ. Room 8112, 110 CM

27 Type of Proceeding: Cause: Crly 4100 SC

28 Grounds raised (Be brief but specific):

- 1 a. Loss or waiver of right
- 2 b. to Intervene.
- 3 c. Estoppel or duty to intervene.
- 4 d. Exclusion of remedies

5 Result: Notice of Appearance Date of Result: 14-2-07
6 or SBA

7 III. Name of Court: Del Rio Tx.

8 Type of Proceeding: motion Habeas Corpus 2255-2254

9 Grounds raised (Be brief but specific):

- 10 a. 40, 70 AM Jur 2d. Pensions and
- 11 b. Retirement Funds. 456, 462
- 12 c.
- 13 d. affidavit

14 Result: 83, ALIZ Feb 16 Date of Result: 14-2-07

15 IV. Name of Court: San Francisco CA

16 Type of Proceeding: General Principles 1-4

17 Grounds raised (Be brief but specific):

- 18 a. 41. Am Jur Social Security
- 19 b. and Medicare 1037 - 1140.
- 20 c. Student Loans
- 21 d. FDC Actions.

22 Result: Rule 17 J. Personal Earnings Date of Result: 4-4-07

23 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

24 Yes No

25 Name and location of court: Del Rio "Brooklyn" 78840

26 B. GROUNDS FOR RELIEF

27 State briefly every reason that you believe you are being confined unlawfully. Give facts to
28 support each claim. For example, what legal right or privilege were you denied? What happened?
29 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Annotations Modern. Status and Ap-
6
action of rule that only voluntary transfer
7 Supporting Facts: 1946 (Soil conservation beni-
8
fits.)

9

10

11 Claim Two: 34 - Restatement (Second) of Conflict
12
of Law 324 - Comparative

13 Supporting Facts: 40 Unibery v. 61 Paso Brick
14
Co. 155 S.W. 715 (Tex. Civ. App. 41
15
Paso 1913.

16

17 Claim Three: 42 - 53 Am Jur. 2d Military and
18
Civil Defense 179.

19 Supporting Facts: Forms; Answer - Personal
20
or Assignment - No
21
Execution or delivery of instrument
22
2 Am Jur. PL 4 Pr Forms (Rev) Assignment
23
Form 8

24 If any of these grounds was not previously presented to any other court, state briefly which
25 grounds were not presented and why:

26 Order to Pay Proceeds of Purchase order 7 Am
27
effect Various Statutes/legol. form 2d Assignment
28
C. Delivery or transfer 131 - 134 Research 25,165
References ALR Digest: Assignment 12, 15

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 2941-005L Cr. 4142 P.M.W.
5 5,30400 C.V.
6

7 Do you have an attorney for this petition? Yes No

8 If you do, give the name and address of your attorney:

9 Manuel Pacheco 1700 Blvd. de los Flores de la Rio ^{Blvd. Veterans.}
TX-

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12

13 Executed on 3-4-08

14 Date

Eduardo Hernandez Jr.

15 Signature of Petitioner

16

17

18

19

20 (Rev. 6/02)

21

22

23

24

25

26

27

28

PleadingS or Change of Parties Generally

A, 215 united states courhouse 111,
East broadway street del rio tx. 78840-5573

38. SURPRISE.

~~alias~~ hernandez morales #72343-008 2255.246. 912 - 920,
142. withdrawal of application or petition 215. sentencing
Research References 908 wages.
west, key Number DIGEST, Aliens 40, 60. 1

doked; cr 9400 sl

The applicant or petitioner may withdraw an application or petition at any time until a decision is issued by the INS! or, in the case of an approved petition, until the person is admitted or granted an adjustment or change of status based on the petition. Caution: A withdrawal may not be retracted. Withdrawal of an application or petition does not preclude the filing of a new application or petition with a new fee. However, the priority or processing date of a withdrawn application or petition may not be applied to a later application or petition. Although the withdrawal itself does not affect the new proceeding, the facts and circumstances surrounding the prior application or petition are otherwise material to the new application or petition.

201. Effect of appeal to BIA; stay of execution of appealed decision

Research References 4. Other Payments, ACTS, on COMMISSIONS,
west's key Number Digest, Aliens 40, 60

once an appeal is filed with the BIA, any motions thereafter must be directed to the BIA, the only exception being where there is a withdrawal of the appeal.

with the exception of an order by an immigration judge denying a motion to reopen or reconsider or a motion to stay deportation, or other stated exceptions, the decision in any proceeding from which an appeal to the board of immigration Appeals (BIA) has been taken is not executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed. Furthermore, the decision will not be executed while an appeal is pending or while a case is before the BIA by way of certificat^{on}. However, a stay of execution of a deportation order requires that the appeal to the BIA be timely filed.

b. Representation and Appearance 31 F SUPP 2d 424.

\$ 50,000 for representing one appellant in capital murder direct appeal, or
\$ 15,000 for representing one petitioner or movant in death penalty habeas case at the appellate level. Counsel's time is compensated at a rate within a range of \$ 75 to

\$ 160 per hour. 464,481/2 hours of Plan 129 L. Ed 2d 133
36 - Removal.

18. U.S.C 3006 A(a)(1) or(2)
2112, 124. L. Ed 306

3002. COURTS. always OPEN rule.

Distinguished in Gilmore v Taylor, 508 U.S 333. 113 S. Ct

27 consumer product warranty Act

Research References

West's Key Number Digest, Alternative Dispute Resolution 114

congress has enacted legislation to encourage warrantors of the consumer products to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

III. APPLICATION TO PARTICULAR DISPUTES

Research References

7 specialized courts

Research References

west's key Number Digest, Federal courts 491, 492 pursuant to constitutional authority, the supreme court has been granted jurisdiction by congress to review various decisions of the federal courts other than the courts of appeals and the district courts including, for example, the court of appeals for the Armed forces. In addition, the foreign Intelligence surveillance Act provides for review by the supreme court by writ of certiorari of certain decisions of the Foreign Intelligence surveillance court.

2. state court Decisions

a. General principles

McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, Dept. of Business Regulation of Florida, 496 U.S. 18, 110 So. Ct. 2238, 110 L. Ed. 2d 17 (1990)

TRANSMISSION OF THE RECORD

4. BRIEFS briefs. 2263.

In addition to other pertinent Rules of Appellate procedure, the following provision shall apply to appeals taken from proceedings recorded by videotape:

a. citation. tape reference. Each citation to portions of video recorded proceedings shall be to the date and time the event occurred, as printed on the videotape. such references in a brief to a segment of the videotape recordings (hereinafter referred to as a tape reference) shall set forth in parentheses the word "tape", the number of the videotape, and the month, day, year, hour, minute and second at which the videotape. (For example; TAPE NO 1; 12/02/88; 13:24:06)

b. Record Excerpts. Record excerpts shall adhere to the procedures set forth the October 15, 1990 revision of local rule 30.1 except that no more than 25 pages of the allowable 40 pages of optional contents (30.1.6.) may be transcript pages of the proceeding.

In the event videotape is submitted as part of the record excerpts, the videotape must be certified original recording or copy provided to the parties by the clerk of the district court.

(C) judges subject to the procedure.

3.2 joint Notice of Appeal

when parties have filed a joint notice of appeal, only one appeal will be docketed and only one docketing fee paid. parties filing a joint notice of appeal shall file a single consolidated brief and appendix.

source: none

cross-references FRAP 3 (b), 28(i), 31

comments: New provision.

3.3. payment of fees

source: none

cross-references FRAP 4

committee comments: New provision. This rule has been added to emphasize that a request for an expedited appeal should be made promptly.

FRAP 5. Appeal by permission

(For text of rule, see Federal Rules of Appellate procedure.)

LAL 5.0 Appeal by permission under 28 U.S.C. § 1292(b) *ABROGATED*

5.1 petition for permission to appeal *ABROGATED*

Reason for elimination of LAL 5.1. Fed. R. App. P. 5(o). which sets forth the contents of a petition for permission to appeal, requires that the petition include "the question itself." This requirement makes LAL 5.1 unnecessary.

FRAP 5.1. Appeal by leave under 28 U.S.C. § 636(c)(5) *ABROGATE*

D. DEFINITIONS

III. DEFINITIONS

A. CJA The Criminal Justice Act.

18 USC 3006A

IV. CJA PAPER

INTERPRETIVE NOTES AND DECISIONS

under former rule, extension of time for filling bill of exceptions did not take the place of the requirement for filing the transcript record return day or within such additional time as may be granted by the district judge or a judge of the appellate court. united states v mosley (1934, CA₅ Miss) 68 F_{2d} 372.

A federal court of appeals has the power, in the exercise of its discretion, to extend the time for filing and docketing record on appeal even though the time prescribed has expired, united states v bowen (1962, CA₅ Fla) 310 F_{2d} 45, 6 FR serv 2d 1228.

31. 2-- Briefs time for filing Briefs of Intervenors or Amicus curiae. The time for filing the brief of the intervenor or amicus is extended until 7 days after the filing of the principal brief of the party supported by the intervenor or amicus.

INTERNAL OPERATING PROCEDURES

see also 5th cir. R31. 2.

FRAP 2). APPENDIX TO the Briefs
(FOR text of rule, see Federal Rules of Appellate Procedure.)

PLAN FOR REPRESENTATION ON APPEAL UNDER THE CRIMINAL JUSTICE ACT

(Effective January 1, 1996; Revised February 1, 2005)

(Effective March 1, 1991)

1. APPLICATION

66. protest demonstrations

Free exercise of religion does not entitle nuclear weapons property in accordance with their religious beliefs. united states v allen (1985, CA₂ NY) 760 F_{2d} 447.

(FDCPA)

190. legal actions by debt collectors

Research References.

West Key Number Digest, Consumer Protection

RULE 7. review by the judicial concil

The judicial concil may, consistent with 28 U.S.C. § 352 (d), delegate the review process to rotating panels drawn at random with power to act on behalf of the full concil.

(A) mail voting. if the judicial council does no opt to act though rotating panels. the following procedures shall apply:

(1) Each member of the judicial concil will vote to either affirm the chief judge's disposition or place the matter on the agenda of the next meeting of the judicial council.

(2) votes will be tabulated by the active circuit judge who is most senior in date of commission and not disqualified.

(3) in the event that all council members are disqualified, a petition for review will be referred to the judicial conference of the united states.

(4) if more than two-thirds of the votes are to affirm, the chief judge's order will be affirmed. if as many as one-third of the members vote to place the petition on the agenda it will be scheduled for the next meeting of the judicial council.

(B) vote at judicial concil. Action by the judicial concil shall be by majority vote of the members present and voting.

(C) Notice of council decision. (1) The order of the judicial council, together any accompanying memorandum, will be provided to the complainant the subject judge.

(2) ~~and~~ ^{The} petitioner will be notified that the law provides for no further review of an unfavorable decision.

(3) If the order of the judicial council affirms the chief judge's disposition, a supporting memorandum will be prepared only if the judicial council concludes that there is a need to supplement the chief judge's explanation.

(4) ^{Materials} related to the judicial council's decision will be made public only at the and the manner set forth in rule 16.

(Amended Oct 1, 1994; Nov. 22, 1996; July 15, 2003.)

Federal Court Decisions
a Court of Appeals, Decisions

noticia of APPEAL. 5 effect Award
170 dividends

24. Freedom of Information Act.

40. Unloaded firearm

184. Plea.

An objection to process is not available on appeal unless the party has placed his objection upon the record by a regular plea. *Toland v. Sprague*. 12 PET 300.

4 L. Ed. 1093

207. Property of Person under guardianship.

34. State v. Hough 585 N.W.2d 393 (Minn. 1998)
Annotations: Teacher's civil liability for administering corporal punishment to pupil, 43
A.L.R.2d 469, 7 (a)

~~F2d~~ ^{431st} Cir. 1950. (Applying Mississippi law) *Martin v. Ebert*,
245 Wis. 341 13 N.W.2d 907, 152 A.L.R. 1142
(1944)

16 12 in equity
Assignments of error based upon the refusal of
instructions in a suit in equity in which the
verdict is only advisory to the court cannot be
entertained on appeal. *McKinley Creek U.S.*
563 22 S. Ct 84 Eng. L. ed. 331.

1514. Civil to restrain harassment of a victim or witness.

(a) (1) A United States district court upon application

(1) EFFECT OF AND FURTHER PROCEEDINGS
PEN, REVIEW, SUPERSEAS STAY, OR
INJUNCTION.

2. RIGHT TO AND AUTHORITY TO
GRANT SUPERSEDES, STAY, OR INJUNCTION

4.13, Generally
TITLE II APPEAL FROM A JUDGMENT OR ORDER
OF A DISTRICT COURT

Rule 3. APPEAL. AS OF RIGHT HOW

(a) filing the notice of appeal.

BANKRUPTCY 10. Collier on Bankruptcy
(to Collier Matthew Bender 15th ed rev)
(in 8019 Suspension of Rules in Part VIII
8019, 01, 8019 RH.

1470. Transfer obscene material to minors.

28. Hasbro, Inc. v. Serafino 958 F. Supp. 19 (D. Mass. 1997). related reference, 966 F. Supp. 108 (D. Mass. 1997) related reference, 37 F. Supp. 2d 921 (D. Mass. 1999.)

29. Weston Compagnie de Finance et D. Investissement S.A. v. La Republica del Ecuador 823 F. Supp. 1106 (S.D.N.Y. 1993). related reference 1993 WL 267282 (SDNY. 1993) related reference 1993 WL 287644 (SD.N.Y. 1993) (Applying New York law.)

Forms: Answer - Denial of Assault and battery 2A Am.Jur. 2d v. Pr. Forms (Rev) Assault and Battery Form 201.

84. Wright v. Starr 42 Nev. 441 174 P. 877.
6 A.L.R. 981 (1919)

85. 61A Am.Jur. 2d. Pleading 287
106, Restatement and Uniform
Commercial Code.

VCC. 2-210 Involving delegation of performance and assignment of rights was significantly amended in 2003, as was the official commentary.

1468. Distributing obscene material by cable or subscription television.

124. Restatement rule

IV. FORM AND REQUISITES 113-143

• A. in General 113-127

III. notice to debtor

ASSESSMENTS FOR PUBLIC IMPROVEMENTS
See See SPECIAL OR LOCAL ASSESSMENTS.

Docket Cr. 9400 SL

Elias Hernandez m.

72347-008

ALIEN IMMIGRATION.

2322. United States as Party

All actions specified in section 2331 of this title
shall be brought by or against the United States
(June 25, 1948 C. 1948 646 62 Stat 969.)

15. State or territorial control.

Research References

41 Am Jur 2d Indians 47-50

402. ^{Case 5:08-cv-02238-RMW Document 4 Filed 04/29/2008 Page 17 of 36} In this chapter the term "judicial officer" means a United States district court judge or a United States magistrate judge.

(Add. Pub. L. 101-650 title I (03 (a) title III 321 Dec. 1 1990, 104 Stat. 5046-5117.)

HISTORICAL AND STATUTORY NOTES.

United States magistrate, in text pursuant to Section 321, of Pub. L. 101 set out as a note under 28 U.S.C. 631.

GOOD WILL
SCOPE OF TOPIC: This topic the ~~over~~ advantage or benefit acquired in consequence of the public patronage of, or public esteem for, an established business.

Treated elsewhere is good will as an element to be considered in the fixing of public utility rates (See Public Utilities).

40. Priorities of creditors.

RESEARCH REFERENCES.

37. Am JUR. 2d, Fraudulent Conveyances and Transfer 218-221

When a fraudulent conveyance is set aside creditor of the grantor, prior and subsequently to the conveyance, share pro rata Kehr v Smith, 20 Wall 31.

22 L ED 313.

112. United States Courthouse
280. South First Street A; 215 United States
SAN JOSE, CA 95113.

Docket: Cr. 9400 SL

Elias Hernandez m. #72347-008/section
Court House 111, East
Broadway Street del
RIO T.Y. 78840

Instruction for Prisoner's Informal Petition APPL

Rule 800. (e)-1. election to transfer APPEAL to District Court

(a) Transfer: if the Panel may transfer an appeal to the district court to: Further the interests of justice, such as: when a timely statement of election has been filed in belated Appeal or any other reason the Appeal, or for any other reason the the Panel deems appropriate.

(b) Election Procedure: when motion for leave to Appeal is Pending, if Appellant moves for leave to Appeal Pursuant to FRBP 8003, and fails to file a separate notice of Appeal concurrently with filing the motion for leave, the motion for leave shall be treated as if it were a notice of Appeal for purposes of calculating the time period for filing an election.

RESEARCH GUIDE

Federal Procedure:

5 B Fed Proc L Ed. Bankruptcy 9-1837
Craig E. Weinebaum Asst. Federal Defender
Eugene OR. for Stephen Richard
Frank R. Papayni, U.S. Attorney Office
Eugene OR for U.S.

348 Fees Effect of Delay in Payment.

Cases.

Notice of Appeal was timely filed even though Party failed to sign check for filing fee. Gross Common Carrier v Baxter Healthcare Corp. (1995, CA7 111) 51 F3d 703.

489. Abstract or abridgement of record.

Research References

Am Jvr. Pleading and Practice Form, Notice Completion of transcripts By Clerk- APPEAL and error 419 abstract of record APPEAL and error 598.

490. Bill of exceptions.

Research References.

Am Jvr. Pleading and Practice Forms, Admission of Service Proposed Amendments to Propose bill of exceptions APPEAL and Error 516; Bill of exceptions General form APPEAL and error 556.

1468. Distributing obscene material by cable or subscription television.

61 Basis in equity and estoppel.

Research References.

West's Key Number Digest, Adoption

Modern Status of law as to equitable adoption or adoption by estoppel, 97 A.L.R. 3d, 347 Equitable Adoption, 18 Am. Jur. Prof. of facts.

2d 531

472. Hardship of withholding Judicial Review

Research References

West's Key Number Digest Administrative Law and Procedure 701 to 706. 741 571
781 to 800

The doctrine of ripeness contains an exception. This permits early review when, for example, the legal question is "fit" for resolution and delay means hardship. Hardship is present only when the agency action in question has a direct, and immediate effect on, or causes a change in, the day to day behavior of the complaining party. The hardship involved may be, for example:

(1) exposure to criminal penalties for non compliance.

(2) a loss of the benefits of government program such as medical benefits of the government program, such as medical.

benefits. Under Medicare or Medicaid
(3) damage to the environment
IX ACCESS to Adoption Record 199 to 204
A. ACCESS to records of concluded
proceedings 199 to 203
B. ACCESS to Records of Pending
proceedings 204)

D Persons who may be Adopted

26. Generally

27. Adults.

28. Effect of Purpose of Adoption
of Adult.

24. Blood relations. ~~non matrimon.~~
~~natural~~ Children.

30. Spouses non marital. Sexual.
~~Partners~~

V. PARTIES

Research References

Adoption II

Annotation References

A.L.R. Digest and child 16, 14

ALR. Index Adoption of Children.

Trial. Strategy References.

32 Am. Jur. Proof of Fact 3d. 83 25

ABANDONED, LOST AND UNCLAIMED

PROPERTY TO ADOTTING LANDOWNERS

+ Key Number Table

WEST'S DIGEST REFERENCES.

1470. Transfer obscene material to minors.

28. Hasbro, Inc. v. Serafino 958 F. Supp. 19 (D. Mass. 1997). related reference, 966 F. Supp. 168 (D. Mass. 1997) related reference, 37 F. Supp. 2d 41 (D. Mass. 1994.)

29. Weston Compagnie de finance et d. Investissement S.A. v. La Republica del Ecuador 823 F. Supp. 1106 (S.D.N.Y. 1993). related reference 1993 WL 267282 (S.D.N.Y. 1993) related reference 1993 WL 287644 (S.D.N.Y. 1993) (Applying New York law.)

Forms: Answer - Denial of Assault and battery
2 Am.Jur. Pl. & Pr. Forms (Rev) Assault and Battery

Form 201.

84. Wright v. Starr 42 Nev. 441 174 P. 877.
6 A.L.R. 981 (1919)

85. 61A Am.Jur. 2d. Pleading 287

186, Restatement and Uniform

Commercial Code

VCC. 2-210 Involving delegation of performance and assignment of rights was significantly amended in 2003, as was the official commentary.

Particulars of Appeal.

Court or Court, or
to Law Review Articles: ~~Law Review Jurisdiction~~
Review Federal Administrative Action: District
34. Post Office. Court of Appeals 88 HAW.
Action seeking review of Postmaster General's
decision denying special postal rate was barred
by six year statute of limitations contained in 28
USCS 2401. (a) Christian Beacon v United States (1963)
(CA3 NJ) 322 F2d 512.

205. Legality of arrest or Seizure

In some instances the cases dealing with the
liability to attachment or garnishment of money
or other property taken from prisoners have
turned upon the question whether it was lawfully
and justifiably taken from the prisoners, it being
held that if it was unlawfully taken from him,
it was not subject to attachment or garnishment
or if the arrest or seizure has been made ille-
gally or in bad faith or if there was no reason-
able ground for believing that the property
taken from the prisoner had any connection
with the offense or could be useful as
evidence on the trial such property has been
held not subject to attachment or garnish-
ment. even though under the local attachment
statutes an officer can be garnished
for money or other property taken from
prisoner while under with an arrest made

made in good faith if it appears that there was probable ground for believing the property taken was connected with the offense for which the arrest was made or if the property was taken for the proper purpose of use as evidence on the trial of the charge against the prisoners.

Not all courts, however regard the legality or justifiability of the taking of money or other property from prisoner as a significant factor. They hold that the money or property is not attachable or garnishable, in accordance with the following theories. If the money or other property was taken and held lawfully and justifiably then in the absence of special statute on the subject the property is not attachable or garnishable because it is in custodia legis if it was taken and held illegally and ~~unlawfully~~ unjustifiably, it is not subject to process because the officer was a trespasser with no right to the money or property and the prisoner is entitled to its return.

2413. executions in favor of United States.
 A writ execution on a judgment obtained for the use of the United States in any court thereof shall be issued from and made returnable to the court which rendered the judgment, but may be executed in any other State, in any territory or the District of Columbia (June 25, 1948, c 846 62 Stat. 975) (1948)

2522 Noticia of Appeal.

Review of a decision at the United States Court of Federal Claims shall be obtained by filing a notice of appeal with the Court of Appeals of the Federal Claims within the time and in the manner prescribed for appeals to the United States Courts of Appeals from the United States District Courts.

Added Pub. L. 97-164 Title I, § 39 (q)(1) Apr. 2 1982, 96 Stat. 44, and Amended Pub. L. 102-572, title IX, § 902(a); Oct. 29, 1992, 106 Stat. 4516.

HISTORICAL AND STATUTORY NOTES

effective and Applicability. provisions

1992 Acts. Amended by title IX of Pub. L. 102-572 effective Oct. 29, 1992. See section 911 of Pub. L. 102-572, set out in note under section 171 of title 28, Judiciary and Judicial Procedure, and section 171 of 1982 Acts. Section effective Oct. 29, 1982. See section 402 of Pub. L. 97-164. Set out in note under section 171 of this title.

the owner of a railroad, although in debt to those who aid in constructing it by furnishing material may still execute a mortgage on it which will be good against unsecured creditor Porter v Pittsburgh Bessemer Steel Co (Porter v Pittsburgh Bessemer Steel Co), 120 US 646 7 S Ct 1206,

17-5 military or Post roads

Research References

39 Am Jur 2d, Highways Streets, and Bridges 300

40 Am Jur 2d, Highways Streets, and Bridges 473 475

Cross references

Postal route telegraph line over See
Supra. 17

Scope of Topic: this topic covers crimes based on the killing of a human being by the by the act agency or omission of another such as murder, negligent homicide, and voluntary or involuntary manslaughter and excuses of defences pertaining to such crimes what reduces a killing to manslaughter, and excuses and defences pertaining to such crimes. Also covered are civil and criminal aspects generally of suicide and attempts to commit suicide.

Treated elsewhere are civil liability for homicide (See Death) and former jeopardy. Insanity and intoxication as defenses to homicide (See Criminal Law). Matters as to Procedure and Proof are treated in such topics as Appeal: Criminal Law: Evidence: Indictments and Informations and trial.

III Treaties.

- 27 Generally
- 28 Terms, and Construction generally
- 29 Force and effect.
- 31 Paramount Power of Congress.

IV. tribal Rights and liabilities.

- 32 Generally.

Distinguished in Ash Sheep Co. v United States. 252 US 164 64 L Ed 510, 40 SCt 241 enjoining grazing of sheep on Indian land without their consent.

39. 5 tribal leases.

88. Consent to lease.

Distinguished in United States v Mitchell. 271 US 11, 70 L Ed 801, 46 S. 718 where estate income tax return is made on basis of income actually received in taxable year there may not be due fed. & state tax accruing that year but paid following year.

Minibus distinguished Amoco Production
Co v. Gambrell, 480 US 202, 94 Ld Ed 1542,
107, Sct Ct, 1396, holding that BIA of
Alaska national interest land conservation
Act (16 USC 3(20) which protects subsistence
uses of certain public lands. Applies only
to lands within boundaries of Alaska,
which do not encompass outer continental
shelf.

United States
Supreme Court Digest

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Sct (Part.)

1364. Civil to restrain harassment of a victim or witness.

(a) (1) A United States district court upon applicable

470. Payment.

Cross References

Due process to, see infra 724.

Singling out persons firms or corporations engage in mining and manufacturing as the ones to be forbidden to issue orders for the payment of labor not reporting to be redeemable in money as is done by Va act of Feb

Wary 13, 1888 Amending and re enacting law

1887, Chap 391, 3 does not render such sta-

tute invalid under US const, 14th Amend as class legislation denying the equal protect

of the laws. *KoKee Consol. v. Taylor*

234. U.S 224. 34 S. Ct. 856.

58 L. Ed 128

made in good faith if it appears that there was probable ground for believing the property taken was connected with the offense for which the arrest was made or if the property was taken for the proper purpose of use as evidence on the trial of the charge against the prisoners.

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noticia of APPEAL.

170 Dividends

24. Freedom of Information Act.

40. Unloaded firearm

SHEPARD's Citations Service. For further research authorities referenced here, use SHEPARD. To be sure your case or statute is still good law and to find additional authorities that support your position SHEPARD is available exclusively from Lexis-Nexis.

207. Property of Person Under Guardianship.

34. State v. Hough 585 N.W.2d 393 (Minn. 1991)
Annotations: Teacher's civil liability for administering corporal punishment to pupil, 43 A.L.R.2d 469, 7(a)

~~12d 3d~~ Cir. 1950. (Applying Mississippi law) Martin v. E. B. 431 5th 245 Wis. 341 13 N.W.2d 907, 152 A.L.R. 1142 (1944)

Attachment A
SPG4330.13**U.S. MEDICAL CENTER FOR FEDERAL PRISONERS**
SPRINGFIELD, MISSOURI**Administrative Remedy System**
Informal Resolution Form

NOTICE TO INMATE/PATIENT: You are advised that prior to filing a Request for Administrative Remedy Form (BP-9), you MUST attempt to informally resolve your complaint through your Correctional Counselor. Please follow the three (3) steps listed below:

1. State below your specific complaint.
2. State below what efforts you have made to resolve your complaint informally.
3. State below what action or resolution you expect.

Signature _____ Reg. No. _____ Date _____

Correctional Counselor's Comments (Including actual steps taken to resolve).

Counselor's Signature _____ Date _____

Distribution:

- I. If complaint is informally resolved, forward original to the Administrative Remedy Coordinator.
- II. If complaint is NOT informally resolved, forward original attached to BP-9 Form to the Administrative Remedy Coordinator.
- III. _____

Form Returned To Counselor	BP-9 Given To Inmate	BP-9 Returned To Counselor	BP-9 Delivered To Atty Advisor
_____	_____	_____	_____
Date _____	_____	_____	_____
Time _____	_____	_____	_____
Counselor _____	_____	_____	_____

Richard W. WIEKING

CLER.

280 SOUTH First st. Suite 2112

SAN JOSE 95113

(408) 535 5363

Fax (408) 535-5360

Petition Hc. 6-02.wpd. (Rev. 6-2)

Pris. Applic. To Pro. in forma.

Pris. Applic. To Pro. in forma.

Pauveris. case no. CR 9400 SL

Prisioner's

Application to Proceed

In forma Pauveris.

1092 END

1-1091

Contracte S17A

Section 59.14
Restatement Second Agency 470, 18 USCA 1201(a)

CHAPTER. 158- ORDER OF FEDERAL AGENCIES:
REVIEW.

2341 Definitions.

RESEARCH GUIDE

Texts: 1C: Benedict on Admiralty. Adjudications 37.

2347. Petitions to review; Proceedings
Research. Guide

Federal Procedure:

2 Fed Proc L Ed. Administrative Procedure 2,263
- 272, 273, 276, 288, 306, 369, 377, 381, 401

3.A. B. Am Jur 2d Aliens and Nationality 62
 62 Am Jur. ~~Aliens~~ 2d Post office.
 Immigration

8. Immigration Law Procedure (rev ed.) (n 104.

Judicial Review 104.05 104.13.

Texts: W. Benedict on Admiralty Adjudications 37.

142. Unlected law.

Trial Court did not abuse its discretion in holding that government's litigations position was substantially justifid Pursuant to 28 USC 2412(d) (1)(A), Part to Equal Access to Justice Act. Attorney fees boilee was frus Properly denied, gratuitor fees. United States v 100,348.00 in Attorney fees. United States currency (2004, CA9 col) 354 F3d 1110.

Prevailing taxpayer was denied Attorney fees because government position that notice of determination was not required was substantially justified until new decision was rendered by tax court, and the government acted quickly to correct error TCS Auto wholesale inc. Beene. (2002 ED was 2002-2 USTC 50752. qo AFTR 2d 6754.

In suit by Attorney seeking writ of mandamus to recover payment of fee award from Commissioner of Social Security, because question of whether a new jurisdiction existed was uncertain or

Where government has successfully sought dismissal of enlisted man's Appeal of decision by Army Board of Inquiry for lack of subject matter jurisdiction under Little Tucker Act. 28 USC 1346 Amend. of attorney fees to enlisted man. Pursuant to Equal Access to Justice Act. 28 USC 2412 was not warranted. Government's decision to pursue motion to dismiss for lack of jurisdiction was reasonable and substantially justified because court's jurisdiction under Little Tucker Act was. S. Jurisdiction under Little Tucker Act was denied as claim as enlisted man represented himself as claimant. Y Brownless. 2005. Dc. Dist. Col. 400 FSupp 2d 52.

46. Law Governing.

For federal Tort Act Claims 28. USC 2671 et. seq. claims. question of when cause of action accrues. is matter of federal law. Pace v. United States. (2003). 10 F.3d 1676.

Text. Benedict. on Admiralty. Adjudications 37.

B. Tolling limitations. Period

72. Generally

Fraudulent concealment and duress are both available for tolling claims under Federal Tort Claims Act. Rates. Y United States (2004). 142 F.3d 7.

121
Fidel Hernandez, m.

#72347-008

Medical Center for Federal Prisoners
Springfield, Missouri 65801 (4020)

Box 1000

121
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AND TO BE RETURNED
WITH THIS NOTICE OR PASTE STAMP
DO NOT SIGN

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